



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

[www.howardcountymd.us](http://www.howardcountymd.us)

FAX 410-313-3467

TDD 410-313-2323

December 23, 2009

## TECHNICAL STAFF REPORT

*Petition Accepted on November 25, 2009  
Planning Board Meeting of January 7, 2010  
Zoning Board Hearing to be scheduled*

**Case No./Petitioner:** ZB 1086M – Preston Capital Management, Inc.

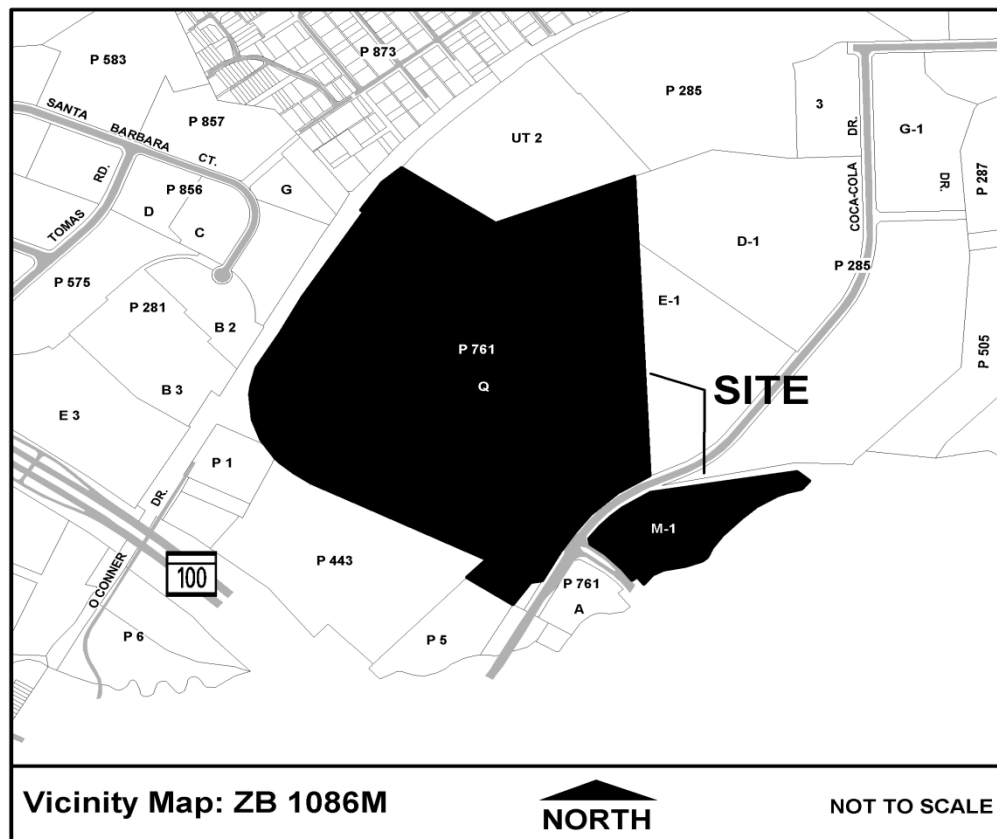
**Location:** Second Election District  
West side of Coca Cola Drive approximately 1,375 feet northeast of MD 100.  
Northeast corner of the Park Circle Drive intersection with Coca Cola Drive.  
Tax Map 38, Grid 20, Parcels Q and M-1; 7000 Park Circle Dr. (the "Property")

**Area of Site:** 122 acres

**Current Zoning:** M-2 **Proposed Zoning:** TOD, with site plan documentation

**Department of Planning and Zoning Recommendation:**

**APPROVAL**



PETITIONER: Preston Capital Management, Inc.

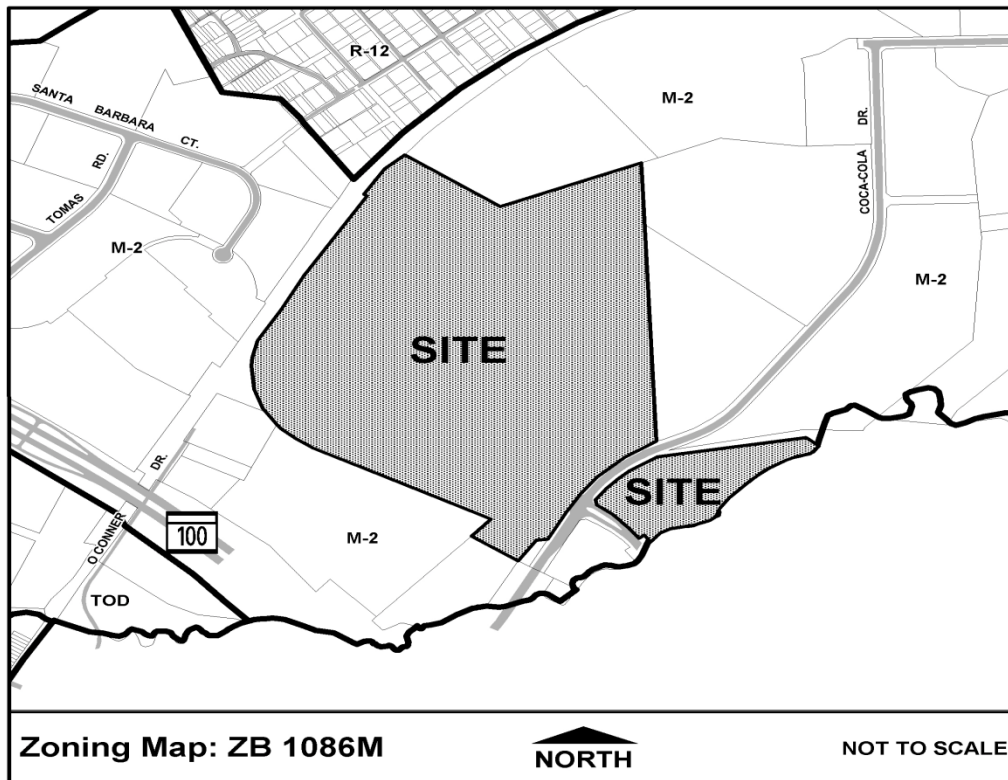
**I. DESCRIPTION OF PROPOSAL**

- # **The Petitioner proposes a Zoning Map Amendment to rezone the Property from the current M-2 (Manufacturing: Heavy) District designation to the TOD (Transit Oriented Development) District.**

The Property is owned by Coca-Cola Enterprises, Inc. ("Coca-Cola") and was purchased by Coca-Cola in 1992 with the intention, at that time, to eventually develop it for a bottling plant and distribution center.

In the supplementary pages to the petition, the Petitioner provides a detailed history of Coca-Cola's interest in such a regional bottling plant and distribution center, and of the many Howard County efforts to convince Coca-Cola to choose the Property as the development site and thereby achieve a significant increase in jobs in the County. These efforts included County Council resolutions to vacate an unneeded public right-of-way through the Property and to revise the water and sewer in-aid-of construction charges schedule as an economic incentive.

- # **Although it did decide to purchase the Property, Coca-Cola did not immediately proceed with the bottling plant and distribution center development, and in 1994 decided to delay the development due to changes in the soft-drink market. Coca-Cola has retained ownership of the Property since that time, and continued to consider its development as remaining in an "evaluation process".**

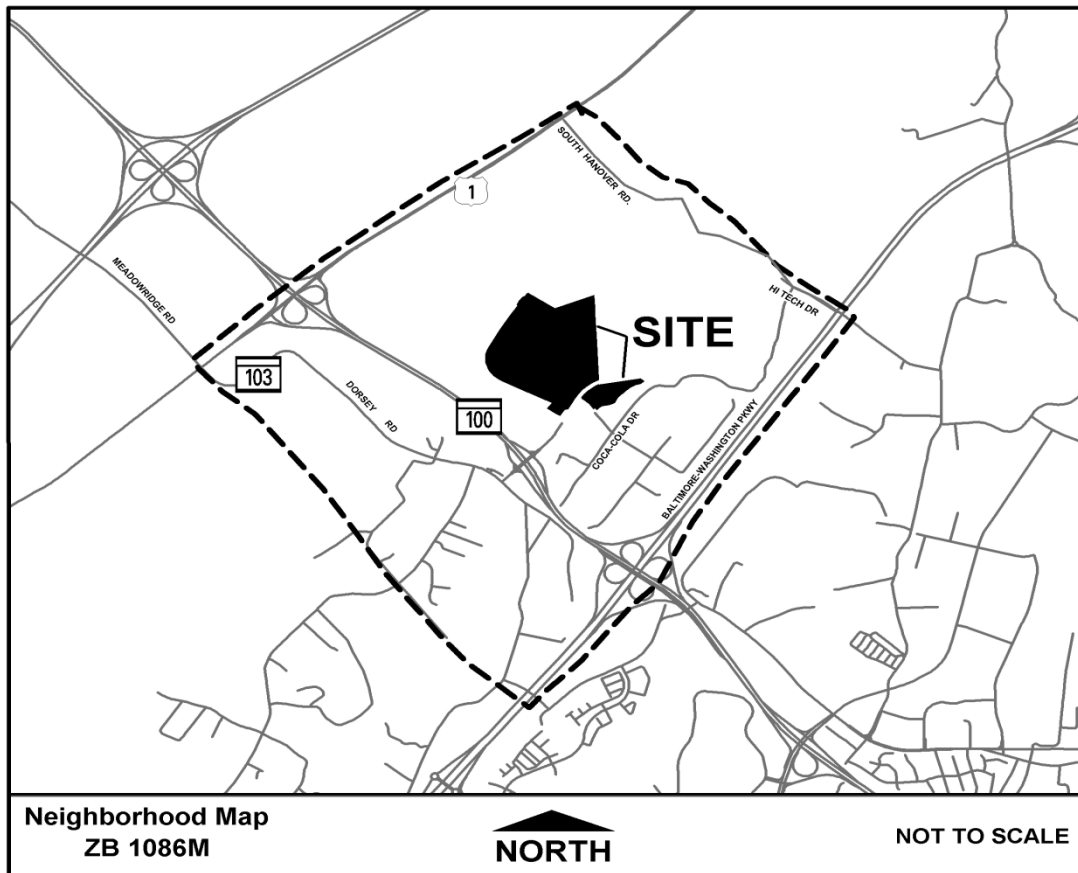


PETITIONER: Preston Capital Management, Inc.

**I. DESCRIPTION OF PROPOSAL**

- # **Relatively recently, however, Coca-Cola decided to sell the Property, and the Petitioner is the contract purchaser. The Petitioner decided that due to the relative close proximity of the Dorsey MARC train station, the Property could be a desirable location for a TOD development, and the Petitioner submitted this Zoning Map Amendment request with this intention.**
- # **To substantiate this request, the Petitioner bases it upon an allegation of mistake in zoning (“Mistake”) but does not include an allegation of substantial change in the character of the neighborhood (“Change”).**

The fundamental position expressed by the Petitioner to support the allegation of mistake is that during the 2004 Comprehensive Zoning Plan (the “2004 CZP”) “...the County Administration, the Department of Planning and Zoning, and the members of the County Council were under the ‘assumption or premise’ that Coca-Cola would construct a new bottling plant and distribution center on the Hanover site within the next 3 to 5 years.” The Petitioner states that this assumption has proven to be incorrect, and invalid, since that time.



## **I. DESCRIPTION OF PROPOSAL**

Please note that within the petition materials, the Petitioner always refers to the “2003 Comprehensive Zoning Plan”. The Department of Planning and Zoning has consistently used the titles 2004 Comprehensive Zoning Plan and 2004 CZP because, although the plan was under consideration in 2003, it became effective April 13, 2004.

- # **Essentially, the Petitioner maintains that because the Property is zoned M-2, which permits the bottling and distribution facility proposed years earlier by Coca-Cola but deferred indefinitely since then, and because the County entities involved in the 2004 CZP were unaware that the plans to develop this facility would be abandoned by Coca-Cola, the supposition that the M-2 District is the most appropriate district for the Property were based upon a false premise.**

The Petitioner suggests that due to the large size of the Property, its relative nearness to the Dorsey MARC train station, and its location adjoining the CSX Railroad right-of-way, if at the time of the 2004 CZP these County entities had been aware that Coca-Cola would not develop it for the originally intended facility, the Property would have been recognized as a likely site for the TOD District.

- # **According to the Petitioner, one reason the Department of Planning and Zoning did not consider and propose the TOD District for the Property during the 2004 CZP process may have been based upon an incorrect interpretation of the Section 127.4.A. Purpose statement for the district, which states in the first sentence that the district is for the “...development and redevelopment of key parcels of land within 3,500 feet of a MARC station.”**

The Petitioner states that the Department of Planning and Zoning was interpreting this 3,500 foot requirement as being a minimum walking path distance, and that such an interpretation is incorrect because the requirement merely necessitates that a parcel of land not be separated from a MARC station by more than 3,500 feet.

In the Introduction portion of the supplementary document, the Petitioner emphasizes that the Property is located “...just a mere 1400 feet from the Dorsey MARC train station.” This appears to be a correct distance estimate from the Property to the MARC train station building, but the station platforms are actually much closer. The portions of the station platforms that extend to the north of the MD 100 bridge over the railroad tracks are estimated to be slightly less than 850 feet from the closest point of the Property.

- # **The Petitioner emphasizes that there is a good potential for some type of direct access between the Property and the MARC station, either by means of an extension of O’Conner Drive from its current northern terminus, or by using portions of the existing State-owned land on the adjacent parcels to the south of the Property to reach O’Conner Drive.**

## **I. DESCRIPTION OF PROPOSAL**

These two alternatives for access between the MARC station and the Property are graphically indicated on the plan submitted as the Documented Site Plan for this Zoning Map Amendment request, which is titled Zoning Map Amendment Site Plan for Oxford Square (the "Oxford Square DSP").

- # **The failure to consider the potential for these direct connections, and also to fail to consider that there are other means of providing convenient access to the MARC station from the Property, such as public transit links like shuttles and/or buses, are also asserted to have led to the mistake to retain the Property as M-2 rather than change the zoning designation to TOD.**
- # **The Petitioner maintains that another noteworthy, relatively recent occurrence that has undermined the assumptions and premises upon which the 2004 CZP was based, was an announcement in July 2009 that the National Security Agency ("NSA") will conduct a major expansion at Fort Meade in the future that greatly exceeds the Fort Meade expansions associated with the Base Realignment and Closure ("BRAC") plans as estimated at the time of the 2004 CZP.**

Because of this NSA expansion, according to the Petitioner, the "...foreseeable demand for apartment housing and office space near Ft. Meade has increased significantly when compared to what was known and contemplated by the County Council in 2003."

In considering this point, it is important to note that the closest point of Fort Meade is estimated to be only three and one-half to four miles south of the Property in a straight line, and perhaps four and one-half to five miles in actual road distance.

- # **Due to the large size of the Property, the site plan documentation requirements are in Section 100.G.2.b. These requirements are a great deal less detailed than what are required for properties under 50 acres. The Oxford Square DSP is therefore more generalized than the documented site plans for smaller sites that are more common.**

The plan depicts the major environmental areas, and these are mostly contained within three locations that are designated to be Preservation/Easement Areas; a very large area with floodplain, wetlands, woodlands and steep slopes at the north of Parcel Q, a smaller area at the southeast corner of that parcel, generally to the southwest of the Coca-Cola Drive intersection with Park Circle Drive, and the entire area of Parcel M-1 which is at the northeast corner of that intersection. The total area for such Preservation/Easement Areas is 42.4 acres.

## **I. DESCRIPTION OF PROPOSAL**

- # The net development area, which takes up most of Parcel M, is approximately 80 acres. Within this area, the Petitioner explains that there is the potential to develop approximately 1,000,000 square feet of mixed use and civic space. In addition, because apartment dwellings are permitted in the TOD District on properties larger than 3 acres, the Petitioner states that the development could include up to 1,400 dwelling units, but only on up to 50 percent of the net acreage of the TOD District, or approximately 51.3 acres.**

The Petitioner acknowledges that at least 15 percent of the dwelling units that are provided will be Moderate Income Housing Units as required. It is stated that there will be an area reserved for a sheltered transit stop, and that there will be public transit services such as public bus service and/ or shuttle services. Also, as noted above, the Oxford Square DSP indicates the generalized paths for a potential direct path to the MARC station.

- # Included with the petition is Exhibit M, which shows both a concept plan for the development of the Property under the current M-2 zoning, and one as a TOD development. This exhibit also depicts the potential concepts for the open space network within the development and also for overall generalized design elements.**

## **II. ZONING HISTORY**

### **A. Subject Property and Adjacent Properties**

- # In 1948, the first Zoning Regulations zoned the land between the B&O Railroad tracks and the Howard County/Anne Arundel County boundary as Commercial B, in the area south of Hanover Road and north of what is now MD 100.**
- # The 1954 Comprehensive Zoning Plan rezoned this same area to M-2 (Manufacturing – 2). Although the mapped M-2 designation remained the same M-2, the 1961 Comprehensive Zoning Plan changed the title of the district to Manufacturing; Heavy.**
- # This M-2 zoning for the Property and the adjacent properties was retained in the 1977, 1985, 1993 and 2004 Comprehensive Zoning Plans.**
- # No record was found of any previous individual Zoning Board, Board of Appeals, or Department of Planning and Zoning case for the Property.**

The only record found within this same area for any adjacent properties is that the area generally to the southeast of the Hi Tech Road intersection with Coca Cola Drive was the subject of ZB 1026M, a 2002 request to rezone approximately 25.4 acres from M-2 to R-MH. This case was dismissed on May 3, 2006, and it never had a Technical Staff Report or a Planning Board meeting.

### III. BACKGROUND INFORMATION

#### A. Site Description

- # **The Parcel M-1 portion of the Property on the east side of Coca-Cola Drive is undeveloped and is predominantly wooded floodplain area. There is no vehicular access to this parcel. The access to Parcel Q is a wide entrance with a median located on the west side of the Coca-Cola Drive intersection with Park Circle Drive.**

This entrance is currently blocked with a fence and a security gate. Once through this gate, a paved road generally 45 feet wide extends almost four-tenths of a mile into the parcel, in a gradual curve to the north. This road was once intended to be a public road but the public right-of-way was abandoned as noted in the petition materials, in anticipation of the Coca-Cola development. Beyond the terminus of this road, a one-lane gravel drive continues to the northeast, down to a wetland and floodplain area.

- # **To each side of the road, Parcel Q is predominantly an open, previously graded area, except for patches of evergreen trees adjacent to the road, along the south lot line, and in other spots. The most expansive open area is the area to the northeast of the road.**

Understandably, these previously graded areas are generally level, and are the highest areas in terms of elevation. As noted above, the north of Parcel Q slopes down a great deal to the environmental features along the north lot line, and in the south there is a more gradual slope down to the south property line.

#### B. Vicinal Properties

- # **Adjoining the north side of Parcel Q is Parcel I, which is zoned M-2. This parcel is improved with a large warehouse development, the access to which is well to the northeast.**
- # **To the east of Parcel Q are Parcel E-1 and Parcel D-1. These parcels are also zoned M-2 and are improved with large warehouse/industrial buildings that, because of the significant rise in elevation in the area to the northeast of Parcel Q, are quite prominent when viewed from the Property.**
- # **Most of the land to the south and southwest of Parcel Q is within Parcel 5 and Parcel 4, which are both zoned M-2 and are predominantly wooded areas owned by the State Highway Administration. An unused railroad spur runs through the northern portions of these two parcels. Also to the south and southwest, beyond Parcel 5 and Parcel 4 is MD 100 and there are two bridges, one over Deep Run and one over the railroad right-of-way. The traffic over these bridges is evident from the Property.**

### III. BACKGROUND INFORMATION

- # **To the southwest of the Property, between the unused railroad spur and the MD 100 bridge over the railroad right-of-way, are three parcels which have frontage on and access to O'Conner Drive. [Please note: the name of this road shows up in County records as both O'Conner or O'Connor and designated as both Drive or Lane. The name O'Conner Drive is used in the petition and also in this report]**

O'Conner Drive actually begins in Anne Arundel County as it begins to the north of MD 103/Dorsey Road, but once it crosses Deep Run it becomes a Howard County Road. It continues to the north parallel to the railroad right-of-way, and under the MD 100 bridge, to reach the three parcels. All three are zoned M-2. The middle parcel is used for a single-family detached dwelling. The other two are larger and are both used for contractor businesses.

- # **Across the railroad right-of-way to the northwest of the Property, the area is mostly zoned M-2 and is developed with multiple industrial buildings and uses. Also on the opposite side of the railroad, well beyond the developable portion of Parcel Q to the northwest, is the Harwood Park residential neighborhood which is zoned R-12.**

#### C. Roads

- # **Coca Cola Drive between MD 100 and Park Circle Drive begins with two northbound and two southbound lanes, but at the Park Circle Drive intersection the northbound lanes become one through-lane and one right-turn lane. North of Park Circle Drive the road eventually transitions to two lanes. There is approximately 50 feet of paving within an approximate 100 foot wide right-of-way.**

- # **The estimated sight distance from the current location of the Park Circle Drive entrance is greater than 1,000 feet to the northeast and the southwest.**

Precise sight distance measurements may only be determined through a detailed sight distance analysis, but sight distance should not be an issue at this intersection because it has a traffic signal and was designed to be a public road intersection.

- # **There is no traffic volume data available for Coca Cola Drive.**

#### D. Water and Sewer Service

- # **The Property is in the Metropolitan District and is within the Existing Service Area according to the Geographic Information System Maps.**

**The development on the Property would be served by public water and sewer facilities.**



### III. BACKGROUND INFORMATION

#### E. General Plan

- # The Property is designated Employment Areas and Redevelopment Corridors on the Policies Map 2000-2020 of the 2000 General Plan.
- # Coca Cola Drive is depicted as a Major Collector on the Transportation Map 2000-2020 of the 2000 General Plan.

#### F. Subdivision Review Committee

- # As required by Section 100.G.2.c. of the Zoning Regulations, the site plan documentation included with this petition was evaluated by the members of the Subdivision Review Committee ("SRC").

Please refer to the attached SRC member responses.

#### G. Adequate Public Facilities Ordinance

- # The petition is subject to the Adequate Public Facilities Ordinance. Site Development Plans for the proposed development are subject to the requirement to pass the test for adequate road facilities.

If residential development is proposed as is permitted in the TOD District, such residential development would need to pass the test for adequate school facilities.

### IV. EVALUATIONS AND CONCLUSIONS

#### A. Relation to the General Plan

- # The Department of Planning and Zoning fully concurs with the Petitioner that the petition is in harmony with the Balanced and Phased Growth Policy No. 4.4 to "Make efficient use of land resources for long-term economic growth" and its goal for Activity Near Transportation Nodes to "Encourage intensification of economic development near transportation nodes and transit services, especially MARC stations, for efficient access."

The Property is a significant site that has considerable potential for economic growth as a TOD development. Although the originally intended Coca-Cola development would have brought economic growth, that plan was never realized and the Property has remained dormant since the early 1990s.

As an M-2-zoned site, the Property still does have potential for development under that zoning as is demonstrated by the concept plan submitted by the Petitioner in Exhibit M. However, the highest and best use of the Property would be realized with a TOD zoning which can generate jobs but can also increase housing availability within relatively close proximity to a MARC station.

#### IV. EVALUATIONS AND CONCLUSIONS

- # **The proximity of the Property to the MARC station should be emphasized. Although there is no direct pedestrian path now, nonetheless a person could currently walk from the Property to the MARC station platform in a distance that is reasonably similar to the long-dimension of a standard New York City block. Even by the current roads, a shuttle service as mentioned by the Petitioner is certainly possible because the distance via Coca-Cola Drive, MD 103 and Deerpath Road is such a relatively short drive.**

- # **The petition is also in harmony with Balanced And Phased Growth Policy No. 4.5 to “Encourage economic growth, provide job opportunities for County residents and ensure the County’s fiscal health”.**

The principal purpose of the TOD District is to encourage multi-story office centers. Such a development on the Property could result in much increased opportunities for good jobs, especially those which may be related to the BRAC expansions at the nearby Fort Meade. In addition, a TOD development with residential units that have good access to the MARC station also expands job opportunities for residents who choose to commute by rail to jobs to the north in or near Baltimore, or to the south to jobs in or near Washington D.C.

- # **The Department of Planning and Zoning also concludes that the petition furthers the purposes of Community Conservation and Enhancement Policy No. 5.3 to “Promote new mixed use focal areas that are in scale and character with their context”, especially the concept of transit oriented mixed use centers near commuter rail stations.**

The existing TOD District properties on the south side of MD 100 that are adjacent to the MARC Station are mostly currently developed with individual, low office buildings, so to realize an overall mixed use development in that location will require assembling those individual sites. The Property, however, is a large, relatively undeveloped site on which a mixed use center can be more easily achieved.

It also should be noted that the current area of the TOD District that is on the south side of MD 100 actually extends to the east of the railroad right-of-way, and therefore, does include some land that currently has frontage on O’Conner Drive. The Oxford Square DSP incorrectly labels this land, Parcel 6, as M-2, but it is in fact zoned TOD.

- # **The Department of Planning and Zoning is reasonably in agreement with the other references the Petitioner makes to the General Plan policies, except however for the reference to Community Conservation and Enhancement Policy 5.11.**

This policy is meant to apply only to existing commercial centers and commercial corridors, and because the Property is essentially undeveloped, this policy has no direct association with the request to rezone the Property to TOD.

#### IV. EVALUATIONS AND CONCLUSIONS

**B. Evaluation of the Petition Concerning the Change Rule**

- # **The Petitioner does not include an allegation of Change to justify the Zoning Map Amendment request. There have certainly been many changes in the character of the overall vicinity of the Property since it was first zoned M-2 more than 50 years ago, but there have been no changes of a zoning-related nature since the 2004 CZP. For the Department of Planning and Zoning proposal of the neighborhood boundaries, please refer to the map on Page 3.**

**C. Evaluation of the Petition Concerning the Mistake Rule**

- # **The Department of Planning and Zoning concurs with the Petitioner on the point that if it had been known during the 2004 CZP process the Coca-Cola development was definitely cancelled, and if the true close proximity and potential for direct access between the Property and the MARC station was also known, it is highly likely that the Department of Planning and Zoning would have considered and promoted a TOD designation for the Property at that time.**

The proper deliberation of the Mistake issue is, of course, whether the County Council decision to retain the M-2 zoning was based on assumptions that have proven to be invalid since the 2004 CZP. The Department of Planning and Zoning concludes that this is correct. The availability of the Property and potential accessibility to the MARC station were not realized at the time of the 2004 CZP, and if they had been, the Property would have been a prime site for a TOD District.

- # **Devising comprehensive zoning plans has largely been a map-based process for many years, although because of the improved character and availability of aerial photographs, more recent zoning plans have benefitted from this additional visual information.**

However, merely looking at a map or aerial photograph is insufficient to understand the true relationship of the Property to the MARC station. Standing on the long unused pavement of the former Park Circle Drive and to see how relatively close the MD 100 bridge over the railroad is, and knowing the MARC station is directly adjacent to and under this bridge, one gets a much better understanding.

- # **Finally, the fact that the Property has had an M-2 zoning for approximately 55 years but has never been developed for M-2 uses suggests that an assumption the M-2 District is the most appropriate zoning for the Property may have been an incorrect assumption.**

#### IV. EVALUATIONS AND CONCLUSIONS

##### **D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.**

1. Most of the land uses of the surrounding areas currently exist. The warehouse/industrial building development to the west across the railroad right-of-way, and to the north and northeast of the Property are unlikely to change to other potential uses. Except for the three smaller properties on O'Conner Drive, the area to the south of the Property is wooded and environmentally sensitive land owned by the State which separates the Property from MD 100.

As depicted in the Illustrative Concept Plan in Exhibit M, a TOD development on the Property can easily be made compatible with the surrounding uses. There are good existing buffers to the north and south, and acceptable buffers can be established to the west and east. The closest M-2 uses to the east are warehouses rather than something more incompatible like a heavy manufacturing use, and the TOD office buildings can be concentrated in the eastern side of the project.

If there are residential uses within the development, these can be concentrated more in the west of the project, and there are opportunities for increasing the buffering to the railroad, such having a parking garage on the west side of a building, between the residences and the railroad, as is depicted on one building. A TOD development in this location is compatible with the existing and potential land uses of the surrounding areas.

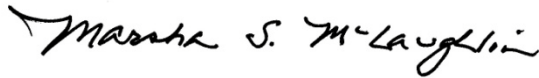
2. The Oxford Square DSP clearly protects the environmental integrity of the Property and the adjoining areas in the location and design of site improvements. The northern area of Parcel Q and the entire Parcel M-1 would be within Preservation/Easement Areas, which in addition to the other smaller areas would total 42.4 acres of preserved environmental areas.
3. Safe road access is available for the Oxford Square DSP development. Coca-Cola Drive is a wide road and it is assumed to have relatively low traffic volumes currently. The only vehicular access to the development would be at two potential points on Coca-Cola Drive; at the existing intersection with Park Circle Drive which has a traffic signal, and at a point approximately 550 feet to the north. Coca-Cola Drive has a well designed but relatively little used interchange at MD 100, and the Coca-Cola Drive intersection with MD 103 also has a traffic signal. It is anticipated that most of the traffic generated by the development will come from the south via MD 100 and MD 103, and little from the north. In any case, there is no concern about providing safe road access to this site.
4. On the issues of compatibility of the proposed development with the policies and objectives of the Howard County General Plan, please refer to the Evaluations and Conclusions Section A above.

PETITIONER: Preston Capital Management, Inc.

**V. RECOMMENDATION**

***APPROVAL***

For the reasons noted above, the Department of Planning and Zoning recommends that the request to rezone the Property from M-2 to TOD with the Oxford Square DSP, be **APPROVED**.



12/23/09

Marsha S. McLaughlin, Director

Date

MM/JRL/jrl

**NOTE:**      **The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**